

OFFICE OF THE DISTRICT ATTORNEY

JARVIS PARSONS
District Attorney



FILED IN
13th COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS
Suite 310
1/28/2021 4:22:56 PM
Bryan, Texas 77803
KATHY S. MILLS
Clerk
Fax: 979-361-4368

BRAZOS COUNTY, TEXAS

January 28, 2021

Honorable Kathy Mills
Clerk
Thirteenth Court of Appeals
901 Leopard, 10th Floor
Corpus Christi, Texas 78401

RE: Elijah Bates v. The State of Texas
Court of Appeals no. 13-20-00280-CR

Dear Ms. Mills:

Oral argument was held on January 27, 2021. This letter-brief is being submitted pursuant to Chief Justice Contreras' request made during oral argument.

During oral argument, the State cited the following cases which were not contained in the State's Brief:

1. *Clarington v. State*, So. 3d , 2020 WL 7050095 (Dist. Ct. App. Fla. Dec. 2, 2020)¹;

Holding that defendant in a probation revocation hearing is "present" when appearing over Zoom. The appellant objected to being required to appear remotely, arguing that it violated his

¹ During oral argument, the State claimed that the court in *Clarington* noted that the defendant did not have a right to be present at his probation revocation hearing, but even if he had, the Zoom procedures protected his Constitutional rights. (Oral Argument YouTube Recording at 31:13). That statement was in error. The passage The State referred to is actually contained in the court's opinion in *State v. Kolaco*, 2020 WL 7334176, *3 (Del. Super. Ct. Dec. 14, 2020), and the State mistakenly attributed it to the *Clarington* opinion.

Sixth Amendment right to confrontation, and complaining that he and his counsel would be in different locations from each other. *Id.* at *3. The court of appeals ruled that a defendant's due process rights are flexible, and must be adapted to existing circumstances. *Id.* at *18-*26. The court further held that, due to the threat posed by the COVID-19 pandemic, remote appearances were an appropriate means of safeguarding the defendant's Constitutional protections, while still administering justice and keeping participants safe. *Id.* at *26. The Court did not address the issue of whether remote appearance interfered with the defendant's right to counsel because the probation revocation hearing had not yet occurred, thus any complaints about how counsel's performance was effected would be speculative. *Id.* at *26, *29.

2. *State v. Kolaco*, 2020 WL 7334176, (Del. Super. Ct. Dec. 14, 2020).

Holding that a trial judge properly denied a joint motion for continuance on a suppression hearing, ruling that conducting the hearing over Zoom properly preserved the defendant's rights under the Sixth Amendment, even if the defendant had a right to be present. *Id.* at *3, *30-*33.

3. *Commonwealth v. Masa*, 2020 WL 4743019, *1 (Mass. Super. Aug. 10, 2020).

Holding that, due to the COVID-19 pandemic, it is necessary to deny the defendant's right to face and examine witnesses in the same physical space during his suppression hearing in order to protect the health and safety of all participants. *Id.* at *2. The court further found that using the Zoom video-conferencing platform protects the defendant's constitutional rights. *Id.*

Sincerely,

/s/ Ryan Calvert
Assistant District Attorney
State Bar No. 24036308
rcalvert@brazoscountytexas.gov

cc: Lane Thibodeaux

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 50143967

Status as of 1/28/2021 4:46 PM CST

Associated Case Party: Elijah Bates

Name	BarNumber	Email	TimestampSubmitted	Status
Lane D.Thibodeaux		lanet1@msn.com	1/28/2021 4:22:56 PM	SENT

Associated Case Party: State of Texas c/o Brazos County District Attorney's Office

Name	BarNumber	Email	TimestampSubmitted	Status
Doug Howell		dhowell@brazoscountytexas.gov	1/28/2021 4:22:56 PM	SENT
Ryan Calvert		rcalvert@brazoscountytexas.gov	1/28/2021 4:22:56 PM	SENT